

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DERRICK CAIN,

Plaintiff,

Case No. 19-cv-11278

Hon. Matthew F. Leitman

v.

U.S. MARSHAL

BRIAN RINEHART, *et al.*,

Defendants

**ORDER (1) ADOPTING RECOMMENDED DISPOSITION OF REPORT
AND RECOMMENDATION (ECF No. 24), (2) GRANTING DEFENDANT'S
MOTION TO SET ASIDE DEFAULT (ECF No. 18), (3) SETTING ASIDE
CLERK'S ENTRY OF DEFAULT (ECF No. 17), AND (4) TERMINATING
PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT (ECF No. 16) AS
MOOT**

On May 2, 2019, Plaintiff Derrick Cain, appearing *pro se*, filed this action against United States Marshal Brian Rinehart and others. (*See* Compl., ECF No. 1.) Cain alleges that Rinehart violated his (Cain's) constitutional rights when Rinehart attempted to effectuate an arrest warrant at Cain's home. (*See id.*, PageID.2.)

Rinehart was served with the Complaint on September 3, 2019, but he failed to appear in this action at that time. (*See* ECF No. 15, PageID.36.) Cain thereafter requested that the Clerk of the Court enter a default against Rinehart, and he filed a motion asking the Court to enter a default judgment in his favor. (*See* Req. for Clerk's Entry of Default, ECF No. 15; Mot. for Default Judgment, ECF No. 16.)

The Clerk of the Court entered a default against Cain on December 18, 2019. (*See* Default, ECF No. 17.)

Shortly after the default was entered, Rinehart appeared and moved to set aside the default. (*See* Mot. to Set Aside Default, ECF No. 18.) Rinehart argued that he was not actually served with the Complaint until October 17, 2019, and that the time for him to respond to the Complaint had not yet expired. (*See id.*)

The assigned Magistrate Judge reviewed Rinehart's motion, and, on January 22, 2020, she issued a report and recommendation in which she recommended that the Court grant the motion and set aside the default (the "R&R"). (*See* R&R, ECF No. 24.) At the conclusion of the R&R, the Magistrate Judge informed the parties that they had "14 days from the date of receipt [of the R&R] within which to file objections for consideration by the district judge." (*Id.*, PageID.82.)

Cain has not filed any objections to the R&R. The failure to object to an R&R releases the Court from its duty to independently review the matter. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985). In addition, the failure to file objections to an R&R waives any further right to appeal. *See Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987).

Accordingly, because Cain has failed to file any objections to the R&R, **IT IS HEREBY ORDERED** that the Magistrate Judge's recommendation to grant Rinehart's motion to set aside the default is **ADOPTED**.

IT IS FURTHER ORDERED that (1) Rinehart's motion to set aside the default (ECF No. 18) is **GRANTED**, (2) The default (ECF No. 17) is **SET ASIDE**, and (3) Cain's motion for default judgment based on entry of the default (ECF No. 16) is **TERMINATED AS MOOT**.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: March 11, 2020

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on March 11, 2020, by electronic means and/or ordinary mail.

s/Holly A. Monda
Case Manager
(810) 341-9764